S.B. CIVIL WRIT PETITION NO. 3981/1995

R.S.R.T.C. & Anr. Vs. Dal Singh & Ors.

DATE OF ORDER :: 05.04.2007

HON'BLE MR. GOVIND MATHUR, J.

Mr. B.S. Bhati, for the petitioners.
Mr. B.S. Sandhu, for the respondent-workman.

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By this petition for writ a challenge is given to the award dated 2.2.1995 passed by the labour court, Bikaner in industrial dispute No.72/91. By the award aforesaid the labour court while holding the respondent-workman guilty for the misconduct alleged, interfered with the quantum of punishment imposed by the disciplinary authority.

In brief facts of the case are that the respondent-workman entered in the service of Rajasthan State Road Transport Corporation being appointed as Conductor on 24.5.1984. On 10.2.1985 and 22.2.1985 the workman was found carrying one and ten ticket-less travellers respectively in the bus where he was discharging the duties of Conductor. His name, therefore, was struck off from the roll on 23.2.1985. Being aggrieved by the same the workman raised an industrial dispute and that was ultimately referred for its adjudication to the labour court, Bikaner by the appropriate government under a notification dated 26.9.1991 in the terms as to whether his termination

from service by the employer is justified and legal, if not, then for what relief he is entitled?

The labour court while exercising powers under Section 11-A of the Act of 1947 permitted the parties to adduce evidence to substantiate the allegations of misconduct and after examining the same reached at the conclusion that the allegations of misconduct are well founded and same stood proved. However, after holding the petitioner guilty for misconduct the labour court interfered with the penalty imposed by the disciplinary authority that is striking off the name from service roll by substituting it by withholding three annual grade increments without cumulative effect and forfeiture of the wages for the period the workman remained out of employment.

While giving challenge to the award impugned it is contended by learned counsel for the petitioner that the petitioner was found guilty for serious allegation of misconduct that is carrying of the travellers ticket-less even after charging fare from them and that amounts misappropriation of funds, the labour court, therefore, was having no occasion to interfere with the quantum of punishment.

Per contra it is contended by learned counsel for the respondent-workman that the labour court is having ample power under Section

11-A of the Act of 1947 to interfere with the quantum of punishment, if, it reaches at the conclusion that the punishment imposed is disproportionate to the delinquency proved. It is also asserted by learned counsel for the respondent-workman that after striking off the name of the workman from the roll on 22.2.1985 an order was passed on 23.4.1985 giving regular appointment to the petitioner as Conductor, therefore, even according to the employer the petitioner was a person fit to be retained in service.

Heard counsel for the parties.

From perusal of the award impugned it is apparent that the labour court on basis of the evidence available on record found the petitioner guilty for the misconduct alleged and that is quite serious being misappropriation of the funds of the Corporation. The disciplinary authority looking to the severability of the allegations strike off the name of the petitioner from the roll list. The labour court without looking into the gravity of the charge interfered with the quantum of penalty. I am of the considered opinion that while exercising powers under Section 11A of the Act of 1947 though labour court is having power to modify penalty imposed by the disciplinary authority but that power is required to be exercised cautiously and only if the penalty imposed is shockingly disproportionate to the delinquency proved. In

the instant matter I do not find any just reason to hold the penalty imposed upon the respondent-workman disproportionate to the misconduct proved. The conduct of the workman by not issuing tickets even after charging the fare is nothing but misappropriation of funds and such conduct normally deserves for adequate penalty, i.e. of dismissal or removal from service.

The fact about the issuance of the order dated 23.2.1985 giving appointment to respondent-workman in regular capacity is also of no consequence. It is the position admitted that the order aforesaid was never served upon the workman and the employer never acted upon that. Such non-acted order does not create any right in favour of the workman.

In view of whatever discussed above this petition for writ deserves acceptance. Same, therefore, is allowed. The award impugned dated 2.2.1995 is quashed to the extent it substitute the penalty of withholding of three increments without cumulative effect instead of striking off the name from roll as a consequent to disciplinary action. The penalty imposed upon the respondent-workman by disciplinary authority is restored. No order as to cost.

(GOVIND MATHUR),

J.

J.Goyal